

CONFIDENTIAL: FOR SETTLEMENT PURPOSES ONLY
DRAFT (5/30/18) MITIGATION AND SETTLEMENT AGREEMENT

This Mitigation and Settlement Agreement ("Agreement") is made and entered into effective [DATE] by and between Atlantic Coast Pipeline LLC ("Atlantic") on the one hand, and Haliwa-Saponi Indian Tribe, Lumbee Tribe of North Carolina, Monacan Indian Nation, and Rappahannock Tribe (together "the Tribes"), on the other hand. Atlantic and the Tribes are collectively referred to herein as the "Parties" and each individually a "Party."

WHEREAS, Atlantic and partners are developing the Atlantic Coast Pipeline ("ACP"), an underground natural gas transmission pipeline across the states of West Virginia, Virginia, and North Carolina, and have obtained or are in the process of obtaining approvals for the project, including permits from the Federal Energy Regulatory Commission (FERC), the U.S. Forest Service, the National Park Service, the U.S. Army Corps of Engineers, and the Commonwealth of Virginia and the State of North Carolina, inclusive of their respective agencies (together "the Federal and State Agencies");

WHEREAS, ACP permitting requires review under Section 106 of the National Historic Preservation Act of 1966, as amended ("NHPA"), for project impacts on historic and cultural resources;

WHEREAS, the Tribes are interested in the ACP due to its proximity to their ancestral and modern Tribal lands;

WHEREAS, the Tribes object to not being included as signatories or consulting parties to the Programmatic Agreement between Atlantic and the Federal Agencies, the Memorandum of Agreement between Atlantic and the Commonwealth of Virginia, and the Memorandum of Understanding between Atlantic and the State of North Carolina (together, "the Project Agreements"), which documents establish measures for mitigating the potential impacts of the ACP on historic and cultural resources;

WHEREAS, the Parties desire to settle fully and finally all differences or disputes between them related to (1) the permitting and review process concerning the ACP, including the Section 106 process under the NHPA, and (2) the adequacy of mitigation payments (together the "Disputed Claims");

WHEREAS, this Agreement is the result of cooperation between the Parties in consideration of the potential impacts of the project on cultural and historic resources and the acknowledgement of a broader interest by the Parties in working toward positive business relationships in the future.

NOW, THEREFORE, in consideration of the mutual covenants and mutual consideration hereinafter contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Project Permits.

- (a) The Parties acknowledge and agree that the terms and provisions of this Agreement adequately resolve the concerns raised by the Tribes. The Tribes hereby covenant and agree not to petition any state or federal regulatory agency or court of law to reopen the Project Agreements or Federal or State Permits, or to submit additional comment letters, protests, or appeals regarding ACP to the Federal or State Agencies. For as long as Atlantic complies with the terms of this Agreement, the Tribes agree not to hinder, condition, or delay the development, construction, or operation of the ACP, and each Tribe shall refute any third-party claims of which it is made aware that purport to speak on the Tribe's behalf or use the Tribe's name if such claims hinder, condition, or delay the development, construction, or operation of the ACP.

- (b) Atlantic will continue to comply with its obligations under law. This Agreement shall not be construed to relieve Atlantic or the Federal and State Agencies from compliance with federal or state law or the terms of the Project Agreements, including obligations to consult tribes whose cultural resources are unanticipated finds during the development of the ACP in accordance with the terms set forth in the Programmatic Agreement.
- (c) At the discretionary request of each Tribe, Atlantic agrees to designate a cultural heritage professional in their employ who shall meet once with each Tribe within 30 days of the date of this Agreement to answer questions about ACP and to exchange additional information known to the Tribes about the location of cultural resources in the anticipated path of ACP, if any, as well as to discuss topics identified in Section 3(b) of this Agreement.
- (d) The Parties agree that the following public statement will be used by each to describe the status of each Tribe's position on the project: "The [insert Tribe name] has worked with Atlantic to resolve its outstanding concerns associated with tribal consultation on the Atlantic Coast Pipeline project". The Tribes agree to submit letters to the FERC and the respective offices of the Governor of Virginia and the Governor of North Carolina with content as reflected in the drafts attached hereto at Exhibit A.

2. Releases.

- (a) The Tribes, for themselves individually and on behalf of their officers, directors, employees, agents, representatives, assigns, predecessors, and successors, (collectively, the "Tribal Releasing Parties"), hereby unconditionally and irrevocably remise, release, acquit, and forever discharge Atlantic and its present and former corporate affiliates, parent companies, owners, subsidiaries, officers, directors, shareholders, employees, agents, representatives, assigns, affiliates, divisions, joint ventures, coventurers, attorneys, accountants, predecessors, and successors (collectively, the "Atlantic Released Parties"), of and from any and all past and present claims, counterclaims, actions, causes of action, lawsuits, set-offs, costs, losses, expenses, demands, damages, obligations, liabilities, of whatever kind or character, direct or indirect, arising at law and in equity, whether known or unknown or capable of being known, anticipated or unanticipated, by right of action or otherwise, whether accrued or hereafter to accrue, which the Tribes, the Tribal Releasing Parties, or any of them, have, may have, or may have had against Atlantic or Atlantic Released Parties, or any of them arising from or relating to the Disputed Claims.
- (b) Atlantic Released Parties hereby unconditionally and irrevocably remise, release, acquit, and forever discharge the Tribal Releasing Parties of and from any and all past and present claims, counterclaims, actions, causes of action, lawsuits, set-offs, costs, losses, expenses, demands, damages, obligations, liabilities, of whatever kind or character, direct or indirect, arising at law and in equity, whether known or unknown or capable of being known, anticipated or unanticipated, by right of action or otherwise, whether accrued or hereafter to accrue, which Atlantic, Atlantic Released Parties, or any of them, have, may have, or may have had, individually or otherwise, against the Tribes or the Tribal Releasing Parties, or any of them arising from or relating to the Disputed Claims.
- (c) The foregoing releases shall not apply to claims by the Tribes or by enrolled members of the Tribes in their individual capacities for physical loss or damage to tangible property or injury or death to persons in each case arising from the ownership, construction, operations, or maintenance of the ACP by Atlantic Released Parties.

3. Consideration.

As consideration for this Agreement:

- (a) Atlantic shall make a financial payment in the amount of One Million Dollars (\$1,000,000) to each tribe for a total of Four Million Dollars (\$4,000,000). Atlantic will transfer half of the funding (\$2,000,000) to the attorney trust account, within five business days of the last Party's signing of this agreement. Atlantic will transfer the remaining half of the funding in the same manner (30) days prior to the requesting the FERC's authorization to place the ACP into commercial service.
- (b) The Parties will collaborate to identify candidates from among the Tribes' membership who could participate in job training programs offered by Atlantic. The Parties further agree to collaborate in convening emergency preparedness and planning and coordination meetings in the Tribes' communities. The Parties will work together to identify other opportunities for developing positive long-term working relationships.

4. Costs and Fees.

The Parties agree that each will bear its respective costs, fees, and expenses, including attorney's fees, incurred in connection with the Disputed Claims; the negotiation, preparation, and execution of this Agreement; and the performance of obligations contemplated by this Agreement.

5. No Admission of Liability.

The Parties expressly agree that neither the entry of the Parties into this Agreement nor any action taken by the Parties in connection herewith shall operate as an admission of liability by any party. All liability and wrongdoing is expressly denied.

6. Non-Assignment of Claims.

The Parties each represent and warrant that the rights and claims released pursuant to this Agreement have not in any way been assigned, transferred, hypothecated, or otherwise encumbered, and that they are the sole and absolute owners of such rights and claims.

7. Authorization.

The Parties represent and agree that the taking of all actions required by them to authorize and approve the execution, delivery, and performance of the terms of this Agreement has been duly authorized by the appropriate duly authorized officers and the same shall constitute their valid and binding obligations. The Parties have the full power and authority to execute and deliver this Agreement.

8. Sufficient Consideration.

The Parties acknowledge that the covenants contained in this Agreement provide good and sufficient consideration for every promise, duty, release, obligation, agreement, and right contained in this Agreement.

9. Binding Agreement.

This Agreement shall be binding and inure to the benefit of the Parties, affiliates, subsidiaries (whether now existing or hereinafter created), and their respective successors and assigns.

10. Governing Law and Jurisdiction.

This Agreement shall be governed by the laws of the Commonwealth of Virginia. To the extent an action is necessary to enforce any of the obligations under this agreement, the Parties agree to submit to jurisdiction in any court located in Virginia.

11. Entire Agreement.

No promise, inducement, representation, or agreement not herein expressed has been made to any Party. This Agreement contains the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. This Agreement cannot be amended, released, discharged, changed, modified, or terminated in any manner without the consent, in writing, of all the Parties hereto.

12. Advice of Counsel.

Each Party to this Agreement acknowledges that it has had the benefit of advice of competent legal counsel with respect to its decision to enter into this Agreement. The language of all parts of this Agreement will in all cases be construed as a whole in accordance with its fair meaning.

13. Counterparts.

The Agreement may be executed electronically and in more than one counterpart, each of which shall be an original, and such counterparts, when taken together, shall constitute one and the same agreement.

14. Independence of Parties' Compliance.

Should any Party fail to comply with its obligations under this Agreement, the Party to which it owes duties shall seek remedies only against the noncompliant Party and such remedy shall be limited to liquidated damages only that shall not exceed the noncompliant Party's portion of financial Consideration.

15. Confidentiality.

Except as provided above at Section 1(d), the Parties agree that (i) the Parties to this Agreement, (ii) the fact and subject of this Agreement, and (iii) the terms and conditions of this Agreement (referred to collectively as the "Confidential Information") shall at all times remain confidential to the fullest extent permitted by law and shall not be disclosed, communicated, or publicized in any way (including anonymously) to any person beyond those persons in the Tribe's leadership required to consider and consent to this Agreement. The Parties agree that this confidentiality and non-disclosure covenant is a material term of this Agreement and shall survive termination of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date set forth herein.

ATLANTIC COAST PIPELINE LLC:

By: _____
Name: _____
Title: _____

THE TRIBES:

THE RAPPAHANNOCK TRIBE

By: _____
Name: _____
Title: _____

THE MONACAN INDIAN NATION

By: _____
Name: _____
Title: _____

THE HALIWA-SAPONI INDIAN TRIBE

By: _____
Name: _____
Title: _____

THE LUMBEE TRIBE OF NORTH
CAROLINA

By: _____
Name: _____
Title: _____